

## **DEPARTMENT OF REAL ESTATE FORUM**

Portola Plaza Hotel, Monterey

January 19, 2007

1:00 – 2:30 p.m.

### **MEETING REVIEW**

**DRE STAFF IN ATTENDANCE:** Commissioner Jeff Davi, John Liberator, Wayne Bell, Bill Moran, Fa-Chi Lin, Barbara Bigby, and Lisa Stratton.

#### **OPENING REMARKS – COMMISSIONER DAVI:**

Commissioner Davi opened the meeting at 1:00 p.m. He introduced special guests Colleen Badagaliacco, current CAR President, and Robert Karpe, former Real Estate Commissioner, and DRE staff in attendance. In an update of current DRE activity, the Commissioner reported that the department currently has 342 authorized positions, 5 offices, a budget of \$43 million, and approximately 521,000 licensees. The department continues to look for ways to increase efficiencies and improve technology in an effort to manage the workload created by a growing licensee population. The processing of a license currently takes 79 days, which is down from a previous high of 175 days. Times should be further reduced with the implementation of the electronic exam project. Along with an increase in the number of licensees goes an increase in enforcement cases. Based upon current activity to date, the department expects to exceed 8000 cases this fiscal year. Cases processed by the Department during the first six month of the current fiscal year reflect that 36 percent involved criminal convictions; 21 percent involved trust fund handling (recordkeeping) violations; 10 percent involved supervision and negligence violations; 4 percent fell under unlicensed activity; and 29 percent of the violations fell under Other (misrepresentation, fraud, etc.). Audits conducted during the first six months of the fiscal year reflected 52 percent of the violations discovered were in the area of trust fund recordkeeping, which is always the biggest area of violation. Commissioner Davi also presented a chart that demonstrated a comparison of home sale activity versus the growth/decline of the licensee population. As reflected on the chart, history shows that there is lag time between any growth/decline in the home sale market, and a related rise/fall of the licensee population. Currently, we're seeing home sales decrease, and a licensee population that continues to rise. Over time, the licensee population will respond to the market demand, and we should see a decrease, or leveling off, of the licensee population.

#### **OPERATIONS REPORT – JOHN LIBERATOR, CHIEF DEPUTY COMMISSIONER:**

Liberator began his report by summarizing the department's fiscal status for the first five months of the 06/07 FY (July 1 through November 30, 2006), compared to that same time period in the 05/06 FY.

Revenue for the first five months of the fiscal year is down 10 percent, which decline is primarily associated with a downturn in subdivision filings and the decline in applicants for the real estate salesperson exam.

Net expenditures are up 12 percent.

Reserves are up 34 percent, at \$50.3 million.

As to Licensing, comparing July 1 – November 30, 2006, with that same period in 2005:

Salesperson exams are down 25 percent, while broker exams are up 25 percent. To adjust for the changes in examination demand, certain adjustments have been made to maintain reasonable scheduling timeframes. To respond to the increased demand for broker examinations, those examinations will be scheduled more frequently, utilizing our permanent exam facilities. The demand for salesperson examinations has declined, but still exceeds what can be accommodated using just our permanent exam sites. Therefore, smaller satellite locations on some of the National University campuses and other State facilities are being utilized.

As to Original licenses, Salesperson licenses issued have declined by 22 percent, while the issuance of broker licenses has increased by 11 percent.

As to renewals, 78 percent of the salesperson licenses up for renewal were renewed, while 89 percent of the broker licenses up for renewal were renewed.

Total Licensees:

As of November 30, 2005, there were 471,818 licensees.

As of November 30, 2006, the population had risen to 519,299.

As of January 18, 2007, total number of licensees was 522,508.

Liberator reported that beginning in March of this year, the Department hopes to begin issuing the newly designed license certificate and accompanying plastic pocket card to new licensees and renewal licensees. Each existing licensee will receive a new certificate at no extra charge at the time of renewal. With 522,000 licensees, the issuance of the new certificate and pocket card will be a phased process.

Liberator set forth two licensing related legislative changes that will go into effect this calendar year:

AB 223 – This bill requires that all licensees who have a license expiration date of June 30, 2007, or later, are now required to complete a DRE approved 3 hr. course in Risk Management as part of their mandatory CE requirement in order for their license to be renewed.

AB 2429 – This bill, which is effective October 1, 2007, repeals the DRE's authority to issue a Conditional RES license. As of that date, salesperson applicants can no longer qualify for a Conditional License and must complete college level courses in Real Estate Principles, Real Estate Practice and one additional real estate course in order to sit for the salesperson exam.

As to the DRE's eLicensing system, Liberator reported that transactions conducted via the system continue to increase. Since its inception in September 2002, 1,240,000 transactions have been conducted via eLicensing. This currently includes 53 percent of all renewals, 59 percent of license changes, and 79 percent of scheduled examinations.

As to the status of the Department's Electronic Exams System project, Liberator reported that software specifications for the electronic exam system have been completed and the development of the customized screens has begun. A simulated electronic exam environment for system testing purposes is also being developed, and staff is working with the Department of General Services to complete necessary renovations to exam sites to accommodate the electronic exam terminals.

As to the Interactive Voice Response (IVR) System project, the department has engaged the services of a call center system integrator to assist in the design of the new system, which is progressing according to the project schedule.

The 2007 Real Estate Law book is now available for downloading from our website. Paper copies, which include a CD version, will be available for purchase the last week in January at a cost of \$25.

Liberator also provided comparative Enforcement and Audit statistics for the 06/07 fiscal year (July 1 – November 30) as compared to the same period in the 05/06 fiscal year:  
563 licenses were denied in 2006, as compared to 483 in 2005.  
218 existing licenses were disciplined in 2006, as compared to 279 in 2005.  
289 audits were conducted in 2006, as compared to 272 in 2005.

As to Subdivision statistics, again comparing the first five months of the 06/07 FY with that same time period in the 05/06 FY, applications for public reports are down 11 percent, which reflects the current new housing market.

**ENFORCEMENT CASES – BILL MORAN, ASST. COMMISSIONER, ENFORCEMENT:**  
Bill Moran reported on two recent enforcement cases of interest.

**LEGAL CASES – WAYNE BELL, CHIEF LEGAL COUNSEL:**  
Wayne Bell reported on two recent legal cases of interest.

**HOW TO PREPARE FOR A DRE AUDIT – FA-CHI LIN, CHIEF AUDITOR:**

Mr. Lin discussed the steps taken by the Department of Real Estate when scheduling, preparing for, and conducting an audit. Mr. Lin reviewed the types of questions brokers will be asked during an audit, the types of records the auditors will want to review, and the length of a typical audit. Mr. Lin also discussed the availability of helpful online resources, which include the Real Estate Law book, the Reference Book, the Broker-Compliance Evaluation Manual, and the Trust Funds booklet, all of which would be of assistance to a broker in ensuring their business operations are being run in compliance with DRE rules and regulations.

**SPECIAL PRESENTATION OF LICENSE CERTIFICATE:**

The Department of Real Estate will soon begin issuing its newly designed license certificate and accompanying plastic pocket card to new and renewal licensees. Commissioner Jeff Davi paid tribute to former Real Estate Commissioner Robert W. Karpe by presenting him with the first certificate and pocket card to be issued. Mr. Karpe, who was appointed to the position by Governor Ronald Reagan, served as Commissioner from 1971 to 1975. During his term, Karpe also served as Vice President (1974-75) of the Association of Real Estate License Law Officials (ARELLO), and in 1981, he was appointed by President Ronald Reagan to head GNMA. Mr. Karpe also served as President of the California Association of REALTORS® (CAR) in 1968. Current CAR President Colleen Badagliacco joined Commissioner Davi in honoring Mr. Karpe.

## **OPEN FORUM:**

**Q)** The use of teams is becoming quite prevalent in the industry. Is a team of salesperson licensees allowed to have a dba such as the “Larry Moe and Curly Joe Team,” and can the broker/owner pay that team in the name of their corporation, “The Three Stooges Inc.?”

**A) Moran -** Technically, if they have a fictitious business name (FBN), and that’s what this would be under the team concept, the FBN should be licensed to the broker. A FBN is not a separate company from the corporation, so the broker can pay the licensees that are affiliated on that team. If the team of salespeople report to one broker, and they’re licensed under a different broker, like an associate broker of that company, then the corporation should pay the commission to the broker they’re licensed to, who would then disburse the funds to the team of salespeople. A salesperson can only receive compensation through their employing broker.

**Q)** So the team of salespeople can have a dba of their own?

**A) Moran -** They cannot be licensed by the DRE with the dba, but their broker can establish the dba.

**Q)** If you have salespeople under your brokerage who sit at different new home subdivisions, are those subdivision locations considered a branch office?

**A) Moran -** Yes. A broker who’s representing a developer in the sale of new homes should establish a branch office location at each site where salespeople will be located.

**Q)** You stress the importance of filing a complaint with the Department when illegal activity is discovered, yet we have no way of doing so. We can’t expect to receive a timely response, or sometimes any response, from the DRE. With the surplus in the reserves, can’t you hire additional enforcement staff so that these cases are handled in a more timely manner? It shouldn’t take months or even years to get these individuals off the street.

**A) Davi -** We augmented staff this past fiscal year, which should improve our investigative response time. Augmenting staff isn’t as simple as just hiring more people because we have extra funds. It isn’t as straight forward as that. It is very easy to file a complaint with the department. The form can be downloaded from our website and faxed to the department. All complaints are reviewed and all complainants are advised of the outcome of their complaints.

**Q)** 1) Regarding eLicensing – are there any plans to expand the system to increase functionality? 2) Relative to the handling of pest reports – will a receipt for report suffice as opposed to an original signature on the face of a pest report?

**A) Lin -** Yes, to your second question.

**A) Bigby -** Every year we plan to augment eLicensing with certain new features and these augmentations are based upon requests that are made to us in this Forum and suggestions that come in through the website. This particular year we are updating the technology and we hope that by the end of the fiscal year we have some new features to show you at a future DRE Forum.

**Q)** Some agents use assistants who are not licensed. What exactly can these assistants do?

**A) Moran -** An unlicensed assistant cannot perform any act that requires a real estate license. The Department has a publication available online titled “Guidelines for Unlicensed Assistants” that sets forth what assistants can and cannot do.

**Q)** To clarify the last question, an unlicensed assistant can also be a person who holds a real estate license but is not working for a broker, correct?

**A) Moran -** If a person has a real estate salesperson license but is not employed with a broker, then technically that individual is not allowed to perform acts that require a real estate license.

**Q)** So even though they hold a license, they are considered unlicensed because they don't work for a broker?

**A) Moran -** Correct. They're not licensed to conduct business.

**Q)** I am a broker associate. I hang my license with a designated officer. If you run the name of the company I work for on your database, I'm not listed as a licensee of that company because I'm a broker. If you run my name, I'm listed but there's no reference to what company I work for, only the street address would match. Isn't there some way to link brokers and broker associates together so that consumers have accurate information?

**A) Moran -** A real estate broker is equal to another real estate broker. It's not the same kind of relationship that exists between a real estate broker and a salesperson where the salesperson has to be licensed to the broker. A broker can engage in as many different business activities as they wish. We have a new feature on our website that allows an individual to type in an address and find all the real estate brokers that are associated with that address. However, the relationship won't show a broker working for a broker.

**Q)** From a responsibility standpoint, the corporate officer is responsible for my acts, is he not? If the DRE were going to audit, he would audit my broker of record, not me as a broker. I wouldn't have any recordkeeping requirements?

**A) Moran -** As long as all your activities are done under the corporation and you're not conducting outside activities, the designated officer of that corporation is responsible for the supervision of the corporation's activities.

**Q)** With respect to your enforcement workload, how about recruiting volunteer deputies to help with the investigative work?

**A) Davi -** The idea of having volunteer deputies has been discussed in the past, but not pursued as there are too many variables to consider with respect to security and privacy concerns, among other things. Although the process may take some time, we do review every complaint that is filed with us and you will be notified of the outcome of that inquiry. No complaint goes unresponded to.

**Q)** Home inspectors currently have no licensing or education requirements. Has DRE considered taking them under its regulatory scheme?

**A) Davi -** No. I would suggest that you look to the Contractors License Board.

**Q)** With respect to the increase in broker licensing, do you track how many broker licensees have obtained their license through the education and experience route, and those who have qualified based on their college degrees?

**A) Davi -** We don't normally track it but we did recently pull that data. It appears 30-40 percent of broker license applicants are using the education exemption to qualify for the broker license.

**A) Liberator** - You can't look at that 30-40 percent as a true number, however, because many of the individuals who have qualified by using their college degree also could have qualified based upon their experience. They just take the easier route.

**Q)** Even though the legislation did not pass, does the DRE stand behind the legislation in that they want people to have either a strong emphasis in real estate education or at least a couple years of experience before managing as a broker?

**A) Davi** - I work for the Governor and I think his veto was pretty clear on this particular issue. Having said that, I have had discussions with the CAR leadership, and heard some of the other ways you are trying to address the issue. It may not be a repeal of the provision, it may be a modification, or it may be new legislation on your part, but we've got to work within the framework that we have. I'm open to meeting with you, I'm open to hearing from you, and I'm open to carrying your message to my Secretary and the Governor himself if I'm able to do that. DRE and CAR have had good dialogue on the issue, and I look forward to that continuing.

**Q)** I'm very disappointed that the legislation requiring the printing of license numbers did not pass. Regarding the nickname issue, does DRE plan to revisit the issue?

**A) Davi** - To clarify, DRE hasn't yet put forward any legislation regarding the license identification numbers. We'll be pursuing it this year, if we receive authority to proceed, and hopefully, the requirement will be in effect by next year. If this legislation passes, it should take care of the nickname issue because consumers will be able to search the licensee by the license number.

**Q)** What is the penalty for practicing real estate without a license? Is the complaint form available on the website only used to report people who are licensed?

**A) Davi** - The department doesn't have jurisdiction over unlicensed individuals. A Desist and Refrain Order would be served on any unlicensed person found to be conducting licensed activity. If that individual ever applies for licensure, the D&R will be on their record and could have a bearing on whether they would be granted a license.

**Q)** Is there any kind of legislation we could work on that would tighten the penalty for unlicensed activity?

**A) Davi** - If legislation were to be passed that involved a penalty for unlicensed activity, and it was put under our jurisdiction, we would enforce it.

**A) Liberator** - Conducting licensed activity without a license is also a criminal offense but oftentimes not the type of offense the District Attorneys will pursue as, understandably, there are so many more heinous crimes that take priority.

**Q)** Please support specialized licensure for mortgage brokers. These brokers are dying for classes that pertain to their businesses, and are tired of taking CE courses that aren't relevant to their area of practice. I'm aware that CAMB is now coming before you looking for approval of the CE courses. We ask that you revisit the idea of specialized licensure.

**A) Davi** - Its up to the education providers to submit courses for approval. The push for a specialized license would need to be industry driven. The best way to initiate it would be to get industry, and that includes CAMB and CAR, to come together and decide to pursue the legislation.

**Q)** Our office is in the process of moving its master listing files or any hard copy files to a corporate office location. Therefore, they won't be maintained in the office. Is this allowable?

**A) Lin -** As long as those files can be shipped from the corporate office to the audit location, there is no problem.

**Q)** Are digital files acceptable?

**A) Lin -** Digital files must be in WORM (write once, read many) format so that the information cannot be altered.

**Q)** Regarding deposit checks and receipts for deposit, is it sufficient to maintain a copy of a deposit in a file or do you actually need to keep a separate list – I understand it's a separate list.

**A) Lin -** There is a separate record that you need to maintain and the form can be downloaded from the website.

**Q)** Regarding licensees who conduct mortgage work and real estate work at the same time, could there be a disclosure that is unified so that the client is informed that the person who they're working with works in both practices?

**A) Davi -** The law is very clear about the requirement for disclosure. You must disclose the relationship and maintain evidence that the disclosure was made.

**CLOSING REMARKS:**

Next meeting is scheduled for June 2007 in Sacramento.

LISA STRATTON  
Recorder